

Sessions Case no. 128 of 2013

Order no. 94 dated 03.08.2017

Today is fixed for further hearing on the point of consideration of charge and hearing of the discharge petitions.

Accused 1) Harka Bahadur Chettri, 2) Keshav Raj Pokhrel, 3) Arun Moktan, 4) Tenzing Khambachay (Sherpa), 5) Kamal Sinha, 6) Edwin Sanchabir Subba, 7) Goutam Tamang, 8) Puran Thami, 9) Keshar Rai, 10) Dawa Sangey Sherpa, 11) Suraj Singh, 12) Kismat Chhettri, 13) Alok Kantamoni Thulung, 14) Sanjoy Tamang, 15) Bhanu Rai, 16) Amol Lama, 17) Nagendra Pradhan, 18) Ramesh Allay, 19) Ashis Tamang, 20) Subhash Tamang, 21) Khagen Tamang, 22) Sona Sherpa, 23) Ruden Sada Lepcha, 24) Ranjit Rai, 25) Rabin Subba and 26) Pradeep @ Bhupendra Pradhan 27) Dinesh Gurung @ Karate Kaila 28) Anita Lakhandri, 29) Sandhya Gurung, 30) Kabita Dahal, 31) Sunil Rai, 32) Sudesh Rai Majhi, 33) Prasant Chhettri @ Yogen, 34) Miss. Urmila Rumba, are present by filing haziras.

Accused 1) Jiten Tamang, 2) Bimal Gurung @ Daju, 3) Smt. Asha Gurung, 4) Pemba Tshering Ola, 5) Roshan Giri, 6) Binay Tamang, 7) Sushma Rai, 8) Dinesh Theeng, 9) Devendra Sharma, 10) Dipen Malay, 11) Tilak Rai, 12) Babita Ganguly, 13) Naresh Rai, 14) Prabin Subba are absent.

Ld. Advocates for the above named accused persons filed three petitions under section 317 Cr.P.C. praying for permission to represent the accused persons by them after serving the copy to the ld. Spl. P.P.

In view of the observation made in the earlier order dated 25.07.2017 since the prosecution could not ensure the appearance of the accused persons the prayer u/s. 317 of Cr.P.C. stands allowed.

Hazira filed on behalf of Bharati Tamang (widow of the deceased) through her advocate.

One petition is filed on behalf of accused Puran Thami and Bhanu Rai and prays for an order to call for a report from the State Government regarding harassment and direct the State Police not to harass them any further during their stay at Kolkata.

Heard the ld. Lawyer for the accused persons and from the petition it transpires that the incident occurred at the bus stop near Howrah railway station. Since the area falls under the jurisdiction of Howrah Commissionerate call for a report from the **Commissioner of Police, Howrah Commissionerate by 09.08.2017** by sending a copy of the petition along with the copy of this order.

Now the further hearing over the discharge petitions dated 30.01.2017 filed on behalf of accused Asha Gurung, Urmila Rumba, Anita Lakhandri, Babita Ganguly, Sandhya Gurung and Sona Sherpa are taken up for hearing and also hearing on the point of consideration of charge.

Contd. Order no. 94 dated 3.8.17.

Ld. Lawyer for the above accused persons has led this court through the statement of Prem Tamang dated 24.3.2011 under section 164 Cr.P.C. wherein the names of only female accused cited is Babita Gangly and Sona Sherpa. The statement of Sailesh Rai under section 164 of Cr.P.C. dated 21.6.2011 reveals the names of only Asha Gurung, Babita Ganguly and Sandhya Gurung. The statement of Arati Tamang under section 164 of Cr.P.C. dated 18.05.2011 does not reveal the name of any female accused. The statement of Smriti Dahal under section 164 of Cr.P.C. dated 18.05.2011 only reveals the female accused as Babita Ganguly, Sona Sherpa, Rumbha Subba and Mamata Gurung who was actually Mamata Rai and who has expired during the pendency of the case. The statement of Kiran Rai under section 164 of Cr.P.C. dated 03.06.2010 reveals no name. The statement of Mina Subba under section 164 of Cr.P.C. dated 16.08.2010 only reveals the female accused as Asha Gurung. The statement of Ajali Das Chhetri under section 164 of Cr.P.C. dated 10.06.2011 wherein he did not name any female accused person. The statement of Chewang Bhutia under section 164 of Cr.P.C. dated 03.06.2010 wherein he did not name any female accused person. The statement of Ratan Chandra Saha under section 164 of Cr.P.C. dated 28.6.2010 did not reveal the names of any female accused. The statement of Mohan Sharma under section 164 of Cr.P.C. dated 24.03.2011 only reveals the female accused as Asha Gurung. The statement of Tribhuban Rai under section 164 of Cr.P.C. dated 24.03.2011 did not reveal the names of any female accused. He has further pointed out that the statement under section 161 of Sri Mahesh Pradhan wherein Urmila Rumbha has been shown to be present on 21.5.2010 in the Southfield College from 10.30 a.m. to 5.35 p.m. at Darjeeling. He, therefore, submits that from the statement under section 164 of the Cr.P.C. as well as 161 of Cr.P.C. the evidence emanating from the same could not be called incriminating evidence but mere suspicion against the five accused persons and no evidence against four accused persons namely Sushma Rai, Sandha Gurung, Urmila Rumbha and Kabita Dahal and therefore all of them are liable to be discharged and should not be subjected to the ordeal of trial.

In this regard he has relied on the following judgements :-

- 1) (2014) 14 SC cases 401 – L. Krishna Reddy vs. State by Station House Officer & Ors.
- 2) (2016) 12 SC Cases 380 – Deepak Surana & Ors. Vs. State of Madhya Pradesh.
- 3) (2009) 8 SC Cases 617 -- Sheetla Sahai and Ors. Vs. State of Madhya Pradesh.
- 4) (1998) 7 SC Cases 337 – Suresh Budharmal Kalani @ Pappu Kalani vs. State of Maharashtra,
- 5) (2000) 2 SC Cases 57 – State of M.P. vs. S.B. Johari & Ors.
- 6) 1997 (41) DRJ, High Court of Delhi, Criminal Revision Petition no. 265 of 1996

Discharge petition dated 30.01.2017 filed on behalf of accused Harka Bahadur Chhetri is taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the accused Dr. Harka Bahadur Chhetri has submitted that the accused was not present at Darjeeling at the relevant time of occurrence and he was present at Kalimpong and simply because his mobile phone was located at Darjeeling does not mean that the accused was present in Darjeeling in person. Moreover, the main allegation is that he had conspired with co-accused to eliminate the deceased Madan Tamang in the meetings in the run up to the incident. Moreover, the statement under section 161 of the Cr.P.C. against the present accused was general in nature as no specific involvement could be established with the incident as such the accused persons is liable to be discharged in view of the various pronouncements of the Hon'ble Supreme Court and the High Court in this regard.

In this regard he has relied on the following judgements :-

- 1) 1977 SC cases (Cri) 533 – State of Bihar vs. Ramesh Singh,
- 2) 2000 SC cases (Cri) 1416 – Hukam Singh & Ors. Vs. State of Rajasthan,
- 3) 2000 SC Cases (Cri) 379 – Rosy and Anr. vs. State of Kerala and Ors.
- 4) 2004 SC cases (Cri) 294 – Banti alias Guddu vs. State of M.P.

At this stage the Id. Lawyer for the accused persons namely Jiten Tamang and Pradeep @ Bhupendra Pradhan prays for adjournment on the ground stated therein.

Heard. Perused the petition. Considered.

Prayer for adjournment is allowed since it is 04.30 p.m.

To date i.e. on 04.8.2017 for further hearing.

D/C. by me.

Sd/-

Chief Judge
City Sessions Court, Calcutta.

Sd/-

Chief Judge
City Sessions Court, Calcutta.